

**REMARKS****Overview**

Claims 15-28 are pending in this application. Claims 15, 17, 18, 25 have been amended.

Claim 16 has been cancelled. The present response is an earnest effort to place all claims in proper form for immediate allowance. Reconsideration and passage to issuance is therefore respectfully requested.

**Requirement for Information Under 37 C.F.R. § 1.105**

The Examiner has requested any known publications, brochures, manuals and press releases that describe Michigan State's income model and Brock Associates commodity advisory firm. Such information is included with this response to the extent that the information is information which the Applicant has or is readily obtainable. In particular, information regarding Brock Associates is provided. The income model from Michigan State may not have been published and the inventor is attempting to obtain it from Roy Black.

**Claim Objections**

Claims 17 and 18 have been objected to due to informalities. The Examiner indicated that before the "calculating a level of crop insurance" step of claim 17 the "and" is missing. Therefore, this "and" has been added. The Examiner also indicates that a period is missing at the end of claim 17. It is respectfully submitted that this is not correct as the period was present, however, the Applicant has removed the existing period and added a new period to make it clear to the Examiner that this informality has been remedied. With respect to claim 18, the "and" has been moved. Therefore, it is respectfully submitted that all informalities have been corrected.

**Issues Under 35 U.S.C. § 102**

The Examiner indicates that claims 15-16 and 18-19 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U. S. Published Patent Application No. 2002/0103688 to Schneider. These rejections are respectfully traversed.

First, the Applicant reiterates that the Schneider application relied upon by the Examiner is not legal prior art. Schneider would only be *prima facie* prior art as to what was disclosed in provisional application No. 60/226,857, filed on August 22, 2000. The Applicant submits that disclosure which was filed by Schneider on August 21, 2001, but was not included in provisional application No. 60/226,857 filed on August 22, 2000 does not qualify as a *prima facie* prior art.

Therefore, it is respectfully requested that either the Examiner withdraw this rejection based on the Schneider application filed after the present application or else provide a copy of provisional application No. 60/226,857, so that deficiencies in that disclosure can be identified.

35 U.S.C. § 19(e)(1) makes clear that a claim of priority to a provisional patent application is not absolute in establishing priority, but is limited by the disclosure of the provisional patent application.

Schneider is directed to a production system, not a financial system as the present invention addresses. This is a fundamental difference which must be understood to fully appreciate the present invention. Schneider provides the producer the best combination of acres and the best combination of "expense" inputs, thus Schneider is clearly a production managements system. Schneider does make reference to crop insurance levels (paragraph 17), but this reference is based on production cost, and not market risk and financial risk, as in the present invention. Clearly, Schneider's system is directed toward covering production costs. Thus, Schneider may be useful in optimizing production, or minimizing input costs.

The present invention, however, is directed towards a different problem and uses a different approach. The present invention uses an income approach as opposed to the cost approach of Schneider. **Unlike Schneider, the present invention takes into account market risk and financial risk together to create a marketing plan based on specific marketing strategies, selling price probabilities, and determinations of how, when, where to sell, and the probabilities of reaching price targets.** Another way of explaining this difference is that Schneider is directed towards how to raise a crop and the present invention is directed toward how to sell the crop.

Turning now to the claims, the language of the claims clearly distinguishes over Schneider.

Claim 15 requires "developing agricultural marketing plans for agricultural producers requiring updated marketing information". The Examiner cites to paragraph 17, lines 28-40 and paragraph 26 of Schneider as disclosing this limitation. In paragraph 17, lines 28-40, Schneider merely discloses that:

"Marketing advisors using the present invention can assist farmers with production planning decisions to subsequently develop a marketing plan for the farmer based on the selected crop-acreage combination, the amount of contracted acreage and the level of crop insurance. Agricultural certified public accountants using the present invention can assist farmers with production planning decisions as part of their financial and investment advisory services. Also, agricultural equipment dealers using the present invention can assist farmers with production planning decisions and help the farmer determine whether equipment capacity is adequate to execute the production plan."

Thus, Schneider merely discloses the existence of a marketing plan which requires knowledge of crop-acreage combination, the amount of contracted acreage, and the level of crop

insurance. Schneider does not disclose how to develop a marketing plan as in the present invention. In paragraph 26 Schneider merely discloses:

"Through interaction with the present invention, a farm-specific knowledge base is built, retained and referenced for future consultations. Information may be supplemented, as necessary, with updated and regionally-specific crop production and marketing data which is also stored in the portable knowledge base that can be modified at the discretion of the user."

Thus, Schneider merely discloses updating a farm-specific knowledge base with crop production and marketing data. Note that Schneider does not disclose that the agricultural marketing plan requires updated information. **The present invention updates the marketing plan which is critical to its proper implementation.**

Claim 15 has been amended to require "tying financial obligations of the agricultural producers to the use of the agricultural marketing plans such that the agricultural producers are required to commit to using the agricultural marketing plans as a condition for receiving financing". The Examiner cites to paragraph 6 and paragraph 17, lines 28-40 of Schneider as disclosing tying of financial obligations. Paragraph 6 merely discloses that:

"Finally, the farmer must consider risks. Risk management strategies include, for example, crop rotation, crop diversification, forward contracting (i.e., the practice of selling a crop prior to harvest and/or prior to planting; such a practice reduces market risk by establishing a fixed price) and financial instruments such as, for example, futures options (i.e., contracts giving one party the right to buy/sell a commodity at a particular price during a specific time frame; options are used to hedge risk by balancing an investment position). There are other dimensions of risk including, for example, willingness to implement unproven practices, early adoption of new technologies, new crop varieties and new marketing methods."

All that is disclosed in Schneider is that farmers may have marketing plans and farmers have financial obligations. Schneider fails to disclose the claimed relationship between the two as Schneider is not directed to an income approach or a selling approach.

Claim 15 further requires "wherein the updated marketing comprises probabilities of price targets." Schneider does not disclose using such marketing data. **Note that this updated marketing data that comprises probabilities of price targets is a far more sophisticated type of marketing data than mere pricing and far more useful in the context of developing and updating a marketing plan.**

In addition, claim 15 has been amended to incorporate certain limitations from claim 17, including "eliciting information from the producer; performing a financial assessment for the producer and determining assessment; calculating a marketing financial risk score wherein the marketing financial risk score is defined as a numeric value describing financial risks related to markets and income of the producer.

As the Examiner already recognizes, Schneider does not disclose use of scoring. Therefore this rejection must be withdrawn for this independent reason.

With respect to claim 16, claim 16 has been cancelled and incorporated into claim 15.

With respect to independent claim 18, claim 18 requires "underwriting financing . . . with a strategic marketing plan." The Examiner cites to paragraph 17 of Schneider as disclosing this limitation. This is not correct. Schneider does not disclose any relationship where financing of a producer is conditioned on the use of a strategic marketing plan. Schneider does not disclose that a user of its system will have any special access to financing. Schneider's system is merely a production system which attempts to optimize crop selection and other production decisions. Schneider's system is not a selling system and thus does not provide the mechanism to assure income based on a marketing plan. Claim 18 further requires "implementing the updated strategic marketing plan to capture additional income beyond the assured income." Thus, claim

18 is even further distinguishable over Schneider. Therefore, for all these reasons, this rejection must be withdrawn.

In addition, claim 18 has been amended to provide additional details regarding how the strategic marketing plan is developed. In particular, claim 18 has been amended to require "the developing of the strategic marketing plan including determination of a financial assessment score associated with the producer and a marketing financial risk score defining financial risks related to markets and income of the producer." As the Examiner has already recognized, Schneider does not disclose the use of scoring. Therefore this rejection should be withdrawn as well.

Claim 19 requires "wherin the financing is provided to a producer conditioned on use of the strategic marketing plan." This is yet another limitation not disclosed in Schneider. Therefore, claim 19 is patentable over Schneider for this additional reason as well.

### Issues Under 35 U.S.C. § 103

Claims 17, 20, and 22-28 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over US 2002/0103688 A1 to Schneider in view of Published Patent Application US 2002/0123960 A1 to Erickson. These rejections are respectfully traversed.

First, it is observed that the published Erickson patent application was filed after the present application. Therefore, Erickson is not legal prior art. If the Examiner wishes to rely upon the disclosure of Erickson's earlier filed provisional application as a basis for a rejection, then the Examiner is requested to provide a copy.

The deficiencies of Schneider have already been discussed. In addition, as the Examiner recognizes, Schneider does not disclose the use of scores (Office Action, page 8). The Examiner

also recognizes that Schneider does not disclose a numeric weighted average (Office Action, page 8).

Ericksen is directed towards a significantly different context than the present invention. In particular, Ericksen is directed towards offering loans. In particular, Ericksen takes into account the amount, term, and type of customer loan, as well as data relating to a customer's credit score, debt burden, and collateral. Ericksen calculates an expected probability of default for the loan to the customer and calculates custom loan terms that will deliver a minimum return on equity.

The Examiner cites to paragraph [0003] of Erickson as disclosing the use of risk scores. Here Erickson merely discloses using a credit score of a customer to set loan terms. The Examiner cites to paragraph [0050] of Erickson as disclosing a numeric weighted average. Here, Erickson merely discloses applying the Blackholes Model to compute probability of default. Such a calculation reveals the risk to a lender.

Neither Schneider nor Erickson alone or in combination disclose "calculating a marketing financial score wherein the marketing financial risk score is defined as a numeric value describing financial risks related to markets and income of the agricultural enterprise." as required by claims 17, 20, 22-28. Therefore these rejections must be withdrawn on this basis.

In addition, it is improper to combine Erickson and Schneider as there is no proper motivation or suggestion to combine Erickson and Schneider. The Examiner indicates that the motivation for doing so would have been to calculate the risk of a customer based on data from loan application, and credit bureaus. (Office Action, page 8). This is not a proper motivation or suggestion to combine, particularly given the different context of Erickson and the claimed invention.

First it must be understood that crop production is notorious for providing unpredictable income due to difficulties in determining (1) how much crop will be produced and (2) the price of the crop at a given point in time. Thus income for an agricultural enterprise is not generally known *a priori* as and would not be projected as accurately as would be the information relied upon by Erickson.

Second, characterizing the claimed invention as merely calculating a risk is not correct. Different types of risk scores are calculated -- financial risk and marketing financial risk. In addition, this information is used to determine a marketing plan. It is also observed that the risk scores are used by the producer and not just a lender, as they assist in determining how much market risk a producer can tolerate. The good of the marketing plan is to assure a certain income while providing the opportunity to capture additional income based on opportunities within the market.

Therefore, these rejections should be withdrawn for this independent reason.

Claim 21 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Published Patent Application US 2002/0103688 A1 to Schneider in view of Published Patent Application US 2002/0123960 to Erickson and further in view of Friedman ("Dictionary of Business Terms"). The Examiner recognizes that neither Schneider nor Erickson disclose using a weighted Z-score. Friedman discloses the existence of a Z-factor, but the Examiner fails to appreciate or address the significant difference between a Z-factor in the manufacturing context as disclosed by Friedman and the agricultural context. In particular, the Examiner indicates that Friedman discloses the same equation. That is simply not correct. The Examiner is asked to review Friedman again. Friedman uses definitions which although appropriate for a manufacturing context would not apply directly to agricultural or in developing a marketing plan.

Note that although the same constants are present, the variables are defined differently.

Therefore, this rejection must also be withdrawn.

### Conclusion

This amendment accompanies the filing of a Request for Continued Examination (RCE).

Please charge Deposit Account No. 26-0084 the amount of \$395.00 for the RCE per the attached transmittal.

No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Respectfully submitted,

*John D. Goodhue*  
JOHN D. GOODHUE, Reg. No. 47,603  
McKEE, VOORHEES & SEASE, P.L.C.  
801 Grand Avenue, Suite 3200  
Des Moines, Iowa 50309-2721  
Phone No: (515) 288-3667  
Fax No: (515) 288-1338  
**CUSTOMER NO: 22885**

Attorneys of Record

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